

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Zoe Gardner,
Petitioner

v.

Docket No. CR-25-0380
Date Issued: September 4, 2026

State Board of Retirement,
Respondent

Appearance for Petitioner:

Zoe Gardner, pro se

Appearance for Respondent:

Yande Lombe, Esq.

Administrative Magistrate:

Kenneth J. Forton

SUMMARY

Petitioner, who re-entered State service after taking a refund of her retirement contributions, is entitled to have the buyback interest rate applied to the buy back of the service credit that she had refunded. *See* G.L. c. 32, §§ 3(6)(d), 3(8)(b). She arranged for payment from a 403(b) account that conformed to the “terms and conditions” “prescribed” in the Board’s invoice. § 3(8)(b).

DECISION

On June 14, 2025, Petitioner Zoe Gardner timely appealed, under G.L. c. 32, § 16(4), the decision of Respondent State Board of Retirement, denying her application to

buy back service credit for state service at the buyback interest rate instead of the twice-as-high actuarial assumed interest rate.

On June 26, 2025, the Division of Administrative Law Appeals (DALA) ordered the parties to file pre-hearing memoranda and proposed exhibits in support of their positions. On August 25, 2025, Ms. Gardner submitted her pre-hearing memorandum with 4 proposed exhibits, marked 1-4. On October 3, 2025, the Board submitted its pre-hearing memorandum and 6 proposed exhibits, marked 5-10. The Board also filed a motion to dismiss, which DALA denied on November 12, 2025.

I held an evidentiary hearing on June 16, 2026, by Webex video conference; I digitally recorded it. I admitted the parties' 10 proposed exhibits into evidence as marked. (Exs. 1-10.) The Petitioner testified. The Board called no witnesses. At the hearing's conclusion, I left the administrative record open for both parties to submit additional evidence. The next day, Ms. Gardner corrected a point in her testimony.

On June 30, 2026, Ms. Gardner submitted several additional documents, which I hereby enter into evidence as Exhibit 11. On July 6, 2026, the Board submitted an affidavit of one of its employees, Jonathan Carey, which I hereby enter into evidence as Exhibit 12. Neither party requested further testimony. I therefore closed the administrative record on July 6, 2026.

FINDINGS OF FACT

Based on the evidence presented by the parties, I make the following findings of fact:

1. Zoe Gardner worked at UMass from August 27, 2000, through December 18, 2010. She was a member of the state retirement system during this period. She accumulated approximately 6 years, 6 months, 8 days of service credit. (Testimony; Ex. 3.)

2. After she left state service in December 2010, Ms. Gardner took a full refund of her annuity savings account. (Testimony; Ex. 1.)

3. On December 31, 2023, Ms. Gardner returned to Massachusetts state service. (Testimony; Exs. 1, 3.)

4. Soon thereafter, on January 19, 2024, Ms. Gardner submitted a request to buy back her 2000-2010 service credit at the buyback rate under G.L. c. 32, § 3(8)(b). (Testimony.)

5. Fourteen months later, on March 20, 2025, the Board responded to Ms. Gardner's request. The response listed several ways of buying back the credit. First, she could pay a lump sum of \$30,385.43 no later than April 24, 2025. Second, she could choose one of 6 payment plans listed that would be completed in anywhere from 6 months to 5 years, with interest calculated at the buyback rate of 3.5%. Third, another paragraph provided that, "[i]f you are a participant in the Massachusetts Deferred Compensation SMART Plan, you may transfer your assets to purchase creditable service." No deadline was listed. Finally, another paragraph provided that "[t]he State Retirement Board also accepts a transfer of assets from an IRC section 403(b) plan, such as utilized by certain public schools, local governments, universities, and certain tax-

exempt or nonprofit organizations.” No deadline was listed for this option either. (Ex. 3.)

6. The second page of the letter began with a paragraph that provided blanks so that the member could choose which option she wanted to use to complete the buy back. It stated:

____ Lumpsum to be paid by 04/24/2025.

____ Installment Payment Plan – check the payment plan schedule and return this form to the State Board of Retirement by 04/24/2025.

____ Transfer of assets from the SMART Plan. If you choose this option, you must contact your local SMART Plan representative to obtain the required paperwork. . . .

____ Transfer of assets from an IRC section 403(b) plan.

(Ex. 3.)

7. A couple of days before April 24, 2025, Ms. Gardner spoke with a staff member at the Board, who advised her that she did not need to arrange a 403(b) transfer by the same date as a lump sum payment by check or money order, as long as she checked the appropriate line on the letter, returned it to the Board by April 24, 2025, and then made sure the transfer was made “soon” thereafter. The staff member would not give an exact due date for the transfer or further define what he meant by “soon.” (Testimony; Ex. 11.)

8. During all times pertinent to this appeal, the Board followed an “extension procedure.” The member must put a request in writing in an email with an explanation. The email is forwarded to the Board’s Director of Service Purchases; only she has the authority to make decisions on extensions, which must be made in writing. (Ex. 12.)

9. In all of their email and telephone correspondence, the Board failed to make Ms. Gardner aware of the extension policy. (Testimony.)

10. Beginning on April 21, 2025, Ms. Gardner began transferring some of her retirement funds to a newly created 403(b) account at Fidelity. It was her understanding that she could transfer her retirement funds only by means of a 403(b) account. She therefore arranged for other retirement funds to be transferred to a 403(b) account so that they could be transferred to the Board to complete her credit purchase. (Testimony; Ex. 11.)

11. Ms. Gardner also engaged in a series of emails with the Board. On April 22, 2025, Ms. Gardner wrote that she would work with her financial institution to determine the best way to transfer her funds. (Testimony; Ex. 5.)

12. On April 22, 2025, she submitted the buy back invoice with the 403(b) plan line checked. The Board acknowledged receipt of the checked buy back invoice and stated: “We look forward to receiving your payment soon.” (Testimony; Exs. 5, 7.)

13. Approximately a month later, Fidelity issued a rollover check from the 403(b) account, dated May 28, 2025, to the Board for the full lump sum amount. (Exs. 9, 10.)

14. The Board refused to cash the check because it was received after April 24, 2025, and so notified Ms. Gardner. On June 5, 2025, she asked the Board to “re-open” her service purchase bill, cash the check, and send her a bill for the extra days’ interest between April 24 and May 28. (Testimony; Ex. 7.)

15. Instead, the Board issued a revised buy back invoice on June 5, 2025. The recalculation resulted in a new, much higher lump sum figure of \$55,560.00 at the higher 7% assumed actuarial rate. (Ex. 4.)

16. Surprised at the recalculation, Ms. Gardner requested an appealable final decision, which the Board issued on June 9, 2025. The Board also returned the voided Fidelity check. Ms. Gardner timely appealed. (Ex. 8; Petitioner's appeal letter.)

CONCLUSION AND ORDER

For the reasons stated below, the Petitioner is entitled to have the buyback interest rate applied to her service credit purchase.

Ms. Gardner argues that she is entitled to buy back state service credit at the buyback interest rate of 3.5% instead of the twice-as-high actuarial assumed rate. G.L.

c. 32, § 3(6)(d) provides that a

former member who is reinstated to or who re-enters the active service of the governmental unit in which [s]he was formerly employed to serve in a position which is subject to the provision of this chapter, more than two years after the date of [her] last separation therefrom may, before the date any retirement allowance becomes effective for [her], pay into the annuity savings fund of the system in one sum, or in instalments, upon such terms and conditions as the board may prescribe, make-up payments of an amount equal to the accumulated regular deductions withdrawn by him, together with buyback interest.

G.L. c. 32, § 3(8)(b), describes the purchase procedure more fully. It provides:

Notwithstanding any provision of this chapter to the contrary, *a member* who is reinstated to, or re-enters the active service of, a governmental unit . . . , and who does not (i) pay into the annuity savings fund of the system make-up payments of an amount equal to the accumulated regular deductions withdrawn by the member, together with buyback interest; or (ii) make provision for the repayment in installments, *upon such terms and conditions as the board may prescribe*, to pay into the annuity savings fund of the system make-up payments of an amount

equal to the accumulated regular deductions withdrawn by the member, *together with buyback interest, within 1 year from the date of reinstatement or re-entry or within 1 year after April 2, 2012, whichever is later*, shall pay actuarial assumed interest instead of buyback interest on all make-up payments to be entitled to creditable service resulting from the previous employment.

(Emphasis added).

If these rules are strictly applied to Ms. Gardner, who re-entered service on December 31, 2023, in order to be eligible to use the buyback interest rate, she would have had to either pay back her withdrawn contributions in a lump sum or enter into an installment payment plan no later than December 31, 2024. Ms. Gardner certainly *applied* to buy back her service credit within a year—in fact, she did it within 19 days of re-entering service. The Board, however, was not similarly in a hurry, as it did not respond to Ms. Gardner until more than a year later, on March 20, 2025, thus making compliance with the statutory deadline impossible.

Although the Board has not directly addressed the issue in this appeal, it appears that, rather than treat the one-year deadline as one for *purchasing* the service credit, the Board instead reads the statute more leniently and treats it as a deadline for *applying* to purchase it. Despite the absence of any explicit authority to do so in the statute, this interpretation of the statute is appropriately sensitive to real circumstances. The Board has limited resources, and it is wrong to penalize its members for the sometimes quite long waits for responses to its members' applications. It is hard to imagine that the legislature meant for members to suffer for retirement boards' lack of resources or inefficiency. Since the Board has not based its position on timeliness under the statute, this decision does not address that issue any further.

Unfortunately, that is where the Board's sensitivity seems to have ended. The Board maintains that its invoice set a hard deadline of April 24, 2025 that applied to all possible forms of payment. The Board's analysis is simple: Ms. Gardner's Fidelity check for the full amount, issued on May 28, 2025, did not meet the Board's deadline and, therefore, she is not eligible to buy back her service at the advantageous buyback rate. She must instead use the actuarial assumed rate. Ms. Gardner, on the other hand, maintains that the invoice did not state a deadline for transfers of assets from 403(b) accounts. Moreover, before the deadline, the Board communicated to her that only the signed invoice needed to be returned by the lump sum deadline and that the 403(b) payment could follow "soon" thereafter.

The power to set a deadline for payment of the invoice is found in § 3(8)(b) itself, which authorizes the Board to prescribe "terms and conditions" of payment. There is no dispute that the Board has the power to set such terms and conditions, but, once those terms and conditions are set, the Board is required to follow them. The Board's terms and conditions are most akin to an internal policy. It is well established that "[a]lthough courts give the force of law only to formal agency regulations, administrative agencies must abide by their own internally promulgated policies." *Biogen IDEC MA, Inc. v. Treasurer and Receiver General*, 454 Mass. 174, 186 (2009) (citing *Comm'r of Rev. v. BayBank Middlesex*, 421 Mass. 736, 739 (1996)).

The Board contends that the deadline applicable to Ms. Gardner was clear. I agree, but in the opposite direction from the position the Board asserts. The first reference to 403(b) transfers on the first page of the invoice did not list a deadline.

Then, only two of the payment choices on the second page listed deadlines: lump sum and installment plan. SMART Plan transfer and 403(b) transfer again did not list deadlines. The inclusion of a deadline on two options and the omission of a deadline as to the other two options, which are right below the options with deadlines, affirmatively indicates that those options do not have deadlines. *Cf. Perry v. Zoning Bd. of Appeals of Hull*, 100 Mass. App. Ct. 19, 22–23 (2021) (citations omitted) (“It is a ‘maxim of statutory construction . . . that a statutory expression of one thing is an implied exclusion of other things omitted from the statute. . . . Although this maxim, commonly known as ‘expressio unius est exclusio alterius,’ must be applied with caution, . . . it has particular force where the excluded phrase was used elsewhere in the same provision.”).

Notwithstanding the above, Ms. Gardner double-checked with the Board. She was sure after her communications with the Board that she would be in compliance if she submitted the invoice with the 403(b) choice checked and made sure the Fidelity transfer process she had already started was completed “soon” thereafter. Ms. Gardner did everything she could to comply with the invoice requirements that were printed on the form and were confirmed in her communications with the Board. The Board cannot now seek to enforce a “deadline” that was not on the invoice and then not communicated to Ms. Gardner when she inquired. That’s no deadline at all.

According to the Board, Ms. Gardner could have followed its “extension procedure” to enlarge the deadline. There is a serious problem with this argument. The procedure was not communicated in any way to Ms. Gardner: not in the invoice, not in her emails with Board staff, not in her conversation with Board staff, and most

importantly not in any publicly available source. Ms. Gardner cannot be expected to satisfy terms and conditions that are, in effect, hidden from her.

Moreover, in her April 22, 2025, communication with the Board, she was advised that because she was arranging a transfer from a 403(b) account, she merely needed to return the invoice no later than April 24, 2025, with that line checked, which she did, and then make sure that the 403(b) check was submitted “soon.” In fact, when she pressed the Board employee for a more definite deadline than “soon,” the employee refused to put any more flesh on those bones. This was a logical time for the Board to make Ms. Gardner aware of its extension procedure, as she was in effect letting the Board know that she was concerned with being timely. Instead, it remained silent.

For the foregoing reasons, the Board’s decision is REVERSED. The Board shall accept the Fidelity 403(b) transfer check that Ms. Gardner submitted (or a similar replacement check).

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Kenneth J. Forton

Kenneth J. Forton
Administrative Magistrate

DATED: September 4, 2026